

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

AM2014/203 Graphic Arts, Printing
and Publishing Award 2010

11 FEBRUARY 2019

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS

AM2014/203 GRAPHIC ARTS, PRINTING AND PUBLISHING AWARD 2010

1. On 26 September 2018, the Fair Work Commission (**Commission**) handed down a decision¹ (**Decision**) concerning various awards allocated to 'group 2' of the 4 yearly review of modern awards, including the *Graphic Arts, Printing and Publishing Award 2010* (**Award**).
2. The Australian Industry Group (**Ai Group**) subsequently filed a submission in response to the Decision on 10 December 2018, proposing various amendments to the exposure draft of the Award (**Exposure Draft**). That submission was the subject of discussion during a conference before His Honour, Justice Ross, on 20 December 2018.
3. On 24 December 2018, the Commission issued a report (**Report**) canvassing the issues discussed during the conference.

Paragraph [7] of the Report

4. Paragraph [7] of the Report states:

[7] The parties agreed to engage in further discussions around adding wording to the proposed definition of 'overtime hourly rate' to alleviate concerns raised by deleting clause 21.3(c) of the exposure draft. A short written submission is to be filed by no later than **4.00 pm on Friday 18 January 2018** (sic).

5. Ai Group has engaged in multiple discussions with the AMWU about various issues pertaining to the definition of overtime hourly rate and clause 21.3(c) of the Exposure Draft.
6. In light of those discussions and having further considered the variations proposed in our submission of 10 December 2018, we suggest that instead of deleting clause 21.3(c), it be replaced with the following:

¹ 4 yearly review of modern awards – Award stage – Group 2 [2018] FWCFB 5986.

The shift allowance is payable during overtime in accordance with this award.

7. The proposed amendment to clause 21.3(c) is intended to ensure that there is a substantive obligation to pay the shift allowances set out at clauses 21.3(a) and (b) during overtime and to remove the terminology of a “weekly wage”, which is not relevant in the context of the Exposure Draft.
8. Ai Group is not of the view that any changes or amendments are necessary to the proposed definition of ‘overtime hourly rate’.

Paragraph [10] of the Report

9. Paragraph [10] of the Report states:

[10] Ai Group opposed the AMWU’s amendment and also sought to have the words ‘in clause 8.2’ replaced with the words ‘under this award’. Discussion around this issue occurred during the conference and parties agreed to engage in further discussions regarding the wording of the definition and file a short written submission by no later than **4.00pm on Friday 18 January 2018** (sic).

10. Ai Group maintains that the words ‘in clause 8.2’ should be replaced with the words ‘under this award’ for the reasons articulated during the conference.²
11. Ai Group continues to oppose the amendment sought by the AMWU, as set out at paragraph 12 of its submission filed in December 2018. The proposed amendment to the definition of ‘ordinary hourly rate’ would have the effect of rendering the shift allowances *part of* the ordinary hourly rate. This means that, for example, where a penalty is payable to an employee under the award whilst performing shiftwork and that penalty is expressed as a percentage of the ordinary hourly rate, the penalty would *compound* on the shift allowance; as opposed to the separate calculation and payment of the shift allowance.
12. The amendments proposed to the Exposure Draft in our 10 December 2018 would require the calculation of overtime rates on a rate that incorporates the shift allowances under clause 21.3, however this is because clause 31.3(c) of the Award expressly requires this.

² Transcript of proceedings on 20 December 2018 at PN47 – PN50.

13. By contrast, the Award does not require the compounding of any other penalty rate on the shift allowances prescribed by clause 31.3. The amendment proposed by the AMWU would therefore amount to a significant substantive change.

Paragraph [13] of the Report

14. Paragraph [13] of the Report states as follows regarding the AMWU's proposal to insert a definition of 'casual ordinary hourly rate':

[13] This issue was discussed at the conference and Ai Group outlined the position that the general definition isn't necessary, particularly because the term is not used throughout the Exposure Draft. The parties agreed to undertake further discussions regarding any specific provisions of the exposure draft where they may be concerned in relation to how the casual loading is to be calculated.

15. Over the course of our discussions with the AMWU, it has not identified any specific provisions of the Exposure Draft where there may be concern in relation to how the casual loading is to be calculated. Our understanding is that this issue is no longer pressed by the union.

Additional Issue Concerning Clause 17.3(a) – Meal Allowance

16. Ai Group has identified a further issue concerning apparent cross-referencing errors in clause 17.3(a)(iv) and (v) of the Exposure Draft, which should be amended as follows:

17.3 Expense related allowances

(a) Meal allowance

A meal allowance of \$14.28 is payable on each occasion where:

...

- (iv) an employee works overtime for three hours after the employee's ordinary finishing time and does not take a meal break in accordance with clause 24.6 – ~~Meal Breaks~~ Meal period during overtime; or
- (v) an employee takes a subsequent meal break in accordance with ~~clause 22~~ 24.6 – Meal period during overtime when working overtime.

17. This issue is the result of cross-referencing errors in the equivalent clause in the Award.

18. The issue is best understood by considering the wording in the relevant pre-modern award. The equivalent provision in the [Graphic Arts – General – Award 2000](#) (i.e. subclause 5.2.3(e), in clause 5.2 – Allowances) stated: (emphasis added)

5.2.3 Meal allowance

A meal allowance of \$11.46 is payable where:

- 5.2.3(a)** An employee or an adult apprentice (other than a junior or an apprentice) is required to work overtime for more than one and a half hours without being notified on the previous day or earlier that the employee will be so required to work; or
- 5.2.3(b)** An employee or an adult apprentice (other than a junior or an apprentice) who has been so notified of such overtime and then is not required to work such overtime; or
- 5.2.3(c)** A junior or an apprentice (other than an adult apprentice) is required to work overtime for more than one and a half hours; or
- 5.2.3(d)** An employee works overtime for three hours after the employee's ordinary finishing time and does not take a meal break in accordance with 6.4.6(b);
or
- 5.2.3(e)** For each subsequent meal break in accordance with 6.4.6 when working overtime.

19. It can be seen that both of the above cross-references are to clause 6.4.6 (Meal period during overtime), in clause 6.4 (Overtime). This is logical because the meal allowance is only payable for certain meal breaks taken during overtime. We note that all of the paragraphs in clause 5.2.3 refer to overtime work.

20. The equivalent provision in clause 25 of the Award states: (emphasis added)

(b) Meal allowance

A meal allowance of \$14.74 is payable on each occasion where:

- (i)** an employee or an adult apprentice (other than a junior or an apprentice) is required to work overtime for more than one and a half hours without being notified on the previous day or earlier that the employee will be so required to work;
- (ii)** an employee or an adult apprentice (other than a junior or an apprentice) has been so notified of such overtime and then is not required to work such overtime;

- (iii) a junior or an apprentice (other than an adult apprentice) is required to work overtime for more than one and a half hours;
 - (iv) an employee works overtime for three hours after the employee's ordinary finishing time and does not take a meal break in accordance with clause 32—Meal breaks; or
 - (v) an employee takes a subsequent meal break in accordance with clause 32 when working overtime.
21. Consistent with the equivalent clause in the pre-modern award, the references to clause 32 (Meal breaks) in the current award should have been to clause 33.6 (Meal period during overtime). Clause 32 applies to meal breaks during ordinary time. The meal allowance is only payable for meal breaks taken during overtime. We note that all of the paragraphs in clause 25(b) refer to overtime work.
22. In the Exposure Draft, the erroneous cross-reference has been corrected in clause 17.3(a)(iv) but the title of the cross-referenced clause is incorrect. The exposure draft now correctly cross-references clause 24.6 but the title of clause 24.6 is "Meal period during overtime" and not "Meal breaks".
23. Clause 17.3(a)(v) in the Exposure Draft incorrectly cross-references clause 22 – Meal breaks.
24. Both provisions should be amended as set out above.